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March 17, 2006

**VIA ECF FILING**

The Honorable Gregory M. Sleet  
United States District Court for the District of Delaware  
J. Caleb Boggs Federal Building  
844 N. King Street, Room 4324  
Lockbox 19  
Wilmington, DE 19801

Re: **Plaintiffs' Citation of Supplemental Authority**  
**Price v. Chaffinch, No. 04-956-GMS**  
**Foraker v. Chaffinch, No. 04-1207-GMS**

Dear Judge Sleet:

By letter dated March 16, 2006, Plaintiffs brought to the attention of this Court the Third Circuit's recent opinion in O'Connor v. City of Newark, --- F.3d ---, No. 05-2237, 2006 WL 590357 (3d Cir. Mar. 13, 2006).

O'Connor is wholly inapposite to the pending cases. It holds that, when considering application of statutes of limitation, the "bright-line distinction" between "continuing violations" and "discrete acts," recognized by the Supreme Court in National Railroad Passenger Corp. v. Morgan, 536 U.S. 101 (2002), applies equally to retaliation claims under § 1983 as to those under Title VII. 2006 WL 590357, at \*2, \*3. This Court, of course, has never been asked to determine whether the claims of Plaintiffs Price, Warren, and Foraker are subject to any statute of limitations.

Plaintiffs seem to rely on O'Connor only because it mentions in *dicta* the standard for First Amendment retaliation set forth in Suppan v. Dadonna, 203 F.3d 228 (3d Cir. 2000). The parties do not dispute this "deter a person of ordinary firmness" standard. Rather, the material issue of fact in the instant cases is whether Defendants' actions are "de minimis violations" for

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which there is no constitutional liability. This issue was not before the court in O'Connor, and the court did not even attempt to address it.

As always, we are at the Court's disposal if any further briefing on this issue would be helpful.

Respectfully yours,

*/s/ Richard M. Donaldson*

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